

SERVICE DATE – LATE RELEASE FEBRUARY 8, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 237X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
BALTIMORE COUNTY, MD

MOTION FOR PROTECTIVE ORDER

Decided: February 8, 2006

On December 14, 2005, Norfolk Southern Railway Company (NSR) filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903-05 to abandon its freight operating rights and rail freight service over 12.8 miles of a line of railroad between milepost UU-1.0 at Baltimore, MD, and milepost UU-13.8¹ at Cockeysville, MD. In addition to an exemption from 49 U.S.C. 10903, NSR seeks exemption from the offer of financial assistance (OFA) and public use provisions at 49 U.S.C. 10904 and 49 U.S.C. 10905, respectively. Notice of the filing was served and published in the Federal Register on January 3, 2006 (71 FR 168-69).

On January 24, 2006, Mr. James Riffin filed a notice of intent to file an OFA.² On the same date, Mr. Riffin also filed a motion for protective order, pursuant to 49 CFR 1104.14, to allow him to file under seal his confidential, personal financial statement in connection with his intended upcoming OFA.³

The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, subject to the Protective Order and Undertaking contained in the Appendix to this decision. Issuance of the protective order ensures that Mr.

¹ In its petition, NSR used both UU-12.8 and UU-13.8 to identify the ending milepost. The Board's notice, served on January 3, 2006, indicated the ending milepost as UU-12.8. In its subsequent pleadings filed with the Board, NSR has identified milepost UU-13.8 as the correct ending milepost.

² The merits of NSR's request for an exemption from the OFA and public use provisions, as well as the merits of any OFA filed, will be addressed in later decisions.

³ A proposed Protective Order and Undertaking were included with the motion, along with the confidential material.

Riffin's confidential information will be used solely for this proceeding and not for other purposes.

It is ordered:

1. Mr. Riffin's motion for protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. Mr. Riffin's personal financial statement submitted in STB Docket No. AB-290 (Sub-No. 237X) will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purpose of this Protective Order, “confidential information” means the personal financial statement of James Riffin furnished to the Board by Mr. James Riffin in connection with the offer of financial assistance (OFA) he intends to file in STB Docket No. AB-290 (Sub-No. 237X).

2. Confidential information shall be provided to any employee, agent, counsel, or consultant of any party to this proceeding only pursuant to this Protective Order and only upon execution and prior delivery to Mr. Riffin of the attached Undertaking. Confidential information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or any other purpose. Confidential information shall not be provided or disclosed to any person or entity who is not an employee, agent, counsel or consultant of any party to this proceeding.

3. Confidential information shall not be disclosed in any way or to any person without the prior written consent of Mr. Riffin, or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms and has executed the attached Undertaking prior to receiving access to this information.

4. Any documents containing the confidential information must be destroyed, and notice of such destruction must be served on Mr. Riffin at the completion of this and any related Board proceedings, or any judicial review proceedings arising therefrom, whichever comes later.

5. If the Board retains the confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedures set forth at 49 CFR 1104.14.

6. If any party intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceedings arising therefrom, the party shall submit any documents setting forth or revealing such confidential information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such confidential information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.

7. A party must file simultaneously a public version of any confidential submission it files with the Board.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of confidential information by Mr. James Riffin in STB Docket No. AB-290 (Sub-No. 237X) and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any information obtained under this Undertaking, or to use or permit the use of any information learned as a result of receiving such information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-290 (Sub-No. 237X) or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that Mr. Riffin shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____ Address: _____
Position: _____
Affiliation: _____ Telephone: _____
Dated: _____